

AMENDED IN SENATE APRIL 13, 2015

SENATE BILL

No. 391

Introduced by Senator Huff

February 25, 2015

An act to amend Sections ~~241 and 243~~ 241, 241.3, 243.3, and 1203.055 of the Penal Code, relating to assault and battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Huff. Assault and battery: transit employees.

(1) Existing law defines an assault as an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another. Under existing law, an assault committed against specified individuals, ~~such as a peace officer or a lifeguard,~~ *a parking control officer* is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment.

~~This bill would also make an assault committed against a transit employee punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

(2) ~~Existing law defines a battery as any willful and unlawful use of force or violence upon the person of another. Under existing law a battery committed against specified individuals, such as a peace officer or a lifeguard, is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. Under existing law, if an injury is inflicted the battery is punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years.~~

~~This bill would also make a battery committed against a transit employee punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. The bill would, if the battery results in an injury, make the battery punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

This bill would make an assault committed against a parking control officer punishable by a fine not exceeding \$4,000, or by imprisonment in the county jail not exceeding 6 months, or by both that fine and imprisonment.

(2) Existing law makes an assault committed on the property of, or the motor vehicle of, a public transportation provider punishable by a fine not to exceed \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and the imprisonment.

This bill would make an assault committed on the property of, or the motor vehicle of, a public transportation provider punishable by a fine not to exceed \$4,000, or by imprisonment in the state prison not to exceed 2 years, or by both that fine and imprisonment.

(3) Existing law provides that when a battery is committed against the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, as specified, the penalty is imprisonment in a county jail not exceeding one year, or a fine not exceeding \$10,000, or both the fine and imprisonment.

This bill would increase that punishment to imprisonment in a prison not exceeding 4 years, or a fine not exceeding \$20,000, or both the fine and imprisonment.

(4) Existing law also provides that if the victim is injured, a battery committed against the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, as specified, would be punished by a fine not exceeding \$10,000, or by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or 2 or 3 years, or by both that fine and imprisonment.

This bill would increase the punishment, if injury is inflicted, to a fine not exceeding \$20,000, or by imprisonment in the state prison for 3, 4, or 6 years, or by both that fine and imprisonment. The bill would also

provide that a battery committed against the person of an individual authorized to issue citations for fare evasion or passenger conduct violations for a public transportation provider, as defined, or against the person of a parking control officer would be punishable by a fine not exceeding \$20,000, or by imprisonment in the state prison for 3, 4, or 6 years, or by both that fine and imprisonment. By expanding the definition and scope of an existing crime, this bill would impose a state-mandated local program.

(5) Existing law requires a defendant convicted of specified offenses against a passenger, operator, driver, or other occupant of a public transit vehicle, who is granted probation, to serve some period of confinement in a county jail.

This bill would prohibit courts from granting probation to persons convicted of specified assault and battery crimes against transportation providers.

~~(3)~~

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 241 of the Penal Code is amended to
2 read:

3 241. (a) An assault is punishable by a fine not exceeding one
4 thousand dollars (\$1,000), or by imprisonment in ~~the~~ a county jail
5 not exceeding six months, or by both the fine and imprisonment.

6 (b) When an assault is committed against the person of a parking
7 control officer engaged in the performance of his or her duties,
8 and the person committing the offense knows or reasonably should
9 know that the victim is a parking control officer, the assault is
10 punishable by a fine not exceeding ~~two~~ four thousand dollars
11 ~~(\$2,000), (\$4,000)~~, or by imprisonment in ~~the~~ a county jail not
12 exceeding six months, or by both the fine and imprisonment.

13 (c) When an assault is committed against the person of a peace
14 officer, firefighter, emergency medical technician, mobile intensive

1 care paramedic, lifeguard, process server, traffic officer, code
2 enforcement officer, animal control officer, or search and rescue
3 member engaged in the performance of his or her duties, or a
4 physician or nurse engaged in rendering emergency medical care
5 outside a hospital, clinic, or other health care facility, ~~or a transit~~
6 ~~employee~~, and the person committing the offense knows or
7 reasonably should know that the victim is a peace officer,
8 firefighter, emergency medical technician, mobile intensive care
9 paramedic, lifeguard, process server, traffic officer, code
10 enforcement officer, animal control officer, or search and rescue
11 member engaged in the performance of his or her duties, or a
12 physician or nurse engaged in rendering emergency medical care,
13 ~~or a transit employee~~, the assault is punishable by a fine not
14 exceeding two thousand dollars (\$2,000), or by imprisonment in
15 a county jail not exceeding one year, or by both the fine and
16 imprisonment.

17 (d) As used in this section, the following definitions apply:

18 (1) ~~Peace officer~~ “*Peace officer*” means any person defined in
19 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

20 (2) “Emergency medical technician” means a person possessing
21 a valid course completion certificate from a program approved by
22 the State Department of Health Care Services for the medical
23 training and education of ambulance personnel, and who meets
24 the standards of Division 2.5 (commencing with Section 1797) of
25 the Health and Safety Code.

26 (3) “Mobile intensive care paramedic” refers to those persons
27 who meet the standards set forth in Division 2.5 (commencing
28 with Section 1797) of the Health and Safety Code.

29 (4) “Nurse” means a person who meets the standards of Division
30 2.5 (commencing with Section 1797) of the Health and Safety
31 Code.

32 (5) “Lifeguard” means a person who is:

33 (A) Employed as a lifeguard by the state, a county, or a city,
34 and is designated by local ordinance as a public officer who has a
35 duty and responsibility to enforce local ordinances and
36 misdemeanors through the issuance of citations.

37 (B) Wearing distinctive clothing which includes written
38 identification of the person’s status as a lifeguard and which clearly
39 identifies the employing organization.

1 (6) “Process server” means any person who meets the standards
2 or is expressly exempt from the standards set forth in Section 22350
3 of the Business and Professions Code.

4 (7) “Traffic officer” means any person employed by a county
5 or city to monitor and enforce state laws and local ordinances
6 relating to parking and the operation of vehicles.

7 (8) “Animal control officer” means any person employed by a
8 county or city for purposes of enforcing animal control laws or
9 regulations.

10 (9) (A) “Code enforcement officer” means any person who is
11 not described in Chapter 4.5 (commencing with Section 830) of
12 Title 3 of Part 2 and who is employed by any governmental
13 subdivision, public or quasi-public corporation, public agency,
14 public service corporation, any town, city, county, or municipal
15 corporation, whether incorporated or chartered, that has
16 enforcement authority for health, safety, and welfare requirements,
17 and whose duties include enforcement of any statute, ~~rules,~~
18 ~~regulations, or standards,~~ *rule, regulation, or standard*, and who
19 is authorized to issue citations, or file formal complaints.

20 (B) “Code enforcement officer” also includes any person who
21 is employed by the Department of Housing and Community
22 Development who has enforcement authority for health, safety,
23 and welfare requirements pursuant to the Employee Housing Act
24 (Part 1 (commencing with Section 17000) of Division 13 of the
25 Health and Safety Code); the State Housing Law (Part 1.5
26 (commencing with Section 17910) of Division 13 of the Health
27 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
28 (commencing with Section 18000) of Division 13 of the Health
29 and Safety Code); the Mobilehome Parks Act (Part 2.1
30 (commencing with Section 18200) of Division 13 of the Health
31 and Safety Code); and the Special Occupancy Parks Act (Part 2.3
32 (commencing with Section 18860) of Division 13 of the Health
33 and Safety Code).

34 (10) “Parking control officer” means any person employed by
35 a city, county, or city and county, to monitor and enforce state
36 laws and local ordinances relating to parking.

37 (11) “Search and rescue member” means any person who is part
38 of an organized search and rescue team managed by a governmental
39 agency.

(12) ~~“Transit employee” means any employee of an operator as defined in Section 99210 of the Public Utilities Code.~~

SEC. 2. Section 241.3 of the Penal Code is amended to read:

241.3. (a) When an assault is committed against any person on the property of, or on a motor vehicle of, a public transportation provider, the offense shall be punished by a fine not to exceed ~~two~~ *four* thousand dollars ~~(\$2,000), (\$4,000), or by imprisonment in a county jail not to exceed one year; the state prison not exceeding two years,~~ or by both the fine and imprisonment.

(b) As used in this section, “public transportation provider” means a publicly or privately owned entity that operates, for the transportation of persons for hire, a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in air, or that operates a schoolbus.

(c) As used in this section, “on the property of” means the entire station where public transportation is available, including the parking lot reserved for the public who utilize the transportation system.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding ~~two~~ thousand dollars ~~(\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.~~

(b) ~~When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, or a transit employee, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic~~

1 officer, code enforcement officer, animal control officer, or search
2 and rescue member engaged in the performance of his or her duties,
3 nonsworn employee of a probation department, or a physician or
4 nurse engaged in rendering emergency medical care, or a transit
5 employee, the battery is punishable by a fine not exceeding two
6 thousand dollars (\$2,000), or by imprisonment in a county jail not
7 exceeding one year, or by both that fine and imprisonment.

8 (c) (1) ~~When a battery is committed against a custodial officer,~~
9 ~~firefighter, emergency medical technician, lifeguard, process server,~~
10 ~~traffic officer, or animal control officer engaged in the performance~~
11 ~~of his or her duties, whether on or off duty, or a nonsworn~~
12 ~~employee of a probation department engaged in the performance~~
13 ~~of his or her duties, whether on or off duty, or a physician or nurse~~
14 ~~engaged in rendering emergency medical care outside a hospital,~~
15 ~~clinic, or other health care facility, or a transit employee, and the~~
16 ~~person committing the offense knows or reasonably should know~~
17 ~~that the victim is a nonsworn employee of a probation department,~~
18 ~~custodial officer, firefighter, emergency medical technician,~~
19 ~~lifeguard, process server, traffic officer, or animal control officer~~
20 ~~engaged in the performance of his or her duties, or a physician or~~
21 ~~nurse engaged in rendering emergency medical care, or a transit~~
22 ~~employee, and an injury is inflicted on that victim, the battery is~~
23 ~~punishable by a fine of not more than two thousand dollars~~
24 ~~(\$2,000), by imprisonment in a county jail not exceeding one year,~~
25 ~~or by both that fine and imprisonment, or by imprisonment pursuant~~
26 ~~to subdivision (h) of Section 1170 for 16 months, or two or three~~
27 ~~years.~~

28 (2) ~~When the battery specified in paragraph (1) is committed~~
29 ~~against a peace officer engaged in the performance of his or her~~
30 ~~duties, whether on or off duty, including when the peace officer~~
31 ~~is in a police uniform and is concurrently performing the duties~~
32 ~~required of him or her as a peace officer while also employed in~~
33 ~~a private capacity as a part-time or casual private security guard~~
34 ~~or patrolman and the person committing the offense knows or~~
35 ~~reasonably should know that the victim is a peace officer engaged~~
36 ~~in the performance of his or her duties, the battery is punishable~~
37 ~~by a fine of not more than ten thousand dollars (\$10,000), or by~~
38 ~~imprisonment in a county jail not exceeding one year or pursuant~~
39 ~~to subdivision (h) of Section 1170 for 16 months, or two or three~~
40 ~~years, or by both that fine and imprisonment.~~

1 ~~(d) When a battery is committed against any person and serious~~
2 ~~bodily injury is inflicted on the person, the battery is punishable~~
3 ~~by imprisonment in a county jail not exceeding one year or~~
4 ~~imprisonment pursuant to subdivision (h) of Section 1170 for two,~~
5 ~~three, or four years.~~

6 ~~(e) (1) When a battery is committed against a spouse, a person~~
7 ~~with whom the defendant is cohabiting, a person who is the parent~~
8 ~~of the defendant's child, former spouse, fiancé, or fiancée, or a~~
9 ~~person with whom the defendant currently has, or has previously~~
10 ~~had, a dating or engagement relationship, the battery is punishable~~
11 ~~by a fine not exceeding two thousand dollars (\$2,000), or by~~
12 ~~imprisonment in a county jail for a period of not more than one~~
13 ~~year, or by both that fine and imprisonment. If probation is granted,~~
14 ~~or the execution or imposition of the sentence is suspended, it shall~~
15 ~~be a condition thereof that the defendant participate in, for no less~~
16 ~~than one year, and successfully complete, a batterer's treatment~~
17 ~~program, as described in Section 1203.097, or if none is available,~~
18 ~~another appropriate counseling program designated by the court.~~
19 ~~However, this provision shall not be construed as requiring a city,~~
20 ~~a county, or a city and county to provide a new program or higher~~
21 ~~level of service as contemplated by Section 6 of Article XIII B of~~
22 ~~the California Constitution.~~

23 ~~(2) Upon conviction of a violation of this subdivision, if~~
24 ~~probation is granted, the conditions of probation may include, in~~
25 ~~lieu of a fine, one or both of the following requirements:~~

26 ~~(A) That the defendant make payments to a battered women's~~
27 ~~shelter, up to a maximum of five thousand dollars (\$5,000).~~

28 ~~(B) That the defendant reimburse the victim for reasonable costs~~
29 ~~of counseling and other reasonable expenses that the court finds~~
30 ~~are the direct result of the defendant's offense.~~

31 ~~For any order to pay a fine, make payments to a battered~~
32 ~~women's shelter, or pay restitution as a condition of probation~~
33 ~~under this subdivision, the court shall make a determination of the~~
34 ~~defendant's ability to pay. In no event shall any order to make~~
35 ~~payments to a battered women's shelter be made if it would impair~~
36 ~~the ability of the defendant to pay direct restitution to the victim~~
37 ~~or court-ordered child support. If the injury to a married person is~~
38 ~~caused in whole or in part by the criminal acts of his or her spouse~~
39 ~~in violation of this section, the community property shall not be~~
40 ~~used to discharge the liability of the offending spouse for restitution~~

1 to the injured spouse, required by Section 1203.04, as operative
2 on or before August 2, 1995, or Section 1202.4, or to a shelter for
3 costs with regard to the injured spouse and dependents, required
4 by this section, until all separate property of the offending spouse
5 is exhausted.

6 (3) ~~Upon conviction of a violation of this subdivision, if~~
7 ~~probation is granted or the execution or imposition of the sentence~~
8 ~~is suspended and the person has been previously convicted of a~~
9 ~~violation of this subdivision and sentenced under paragraph (1);~~
10 ~~the person shall be imprisoned for not less than 48 hours in addition~~
11 ~~to the conditions in paragraph (1). However, the court, upon a~~
12 ~~showing of good cause, may elect not to impose the mandatory~~
13 ~~minimum imprisonment as required by this subdivision and may;~~
14 ~~under these circumstances, grant probation or order the suspension~~
15 ~~of the execution or imposition of the sentence.~~

16 (4) ~~The Legislature finds and declares that these specified crimes~~
17 ~~merit special consideration when imposing a sentence so as to~~
18 ~~display society's condemnation for these crimes of violence upon~~
19 ~~victims with whom a close relationship has been formed.~~

20 (5) ~~If a peace officer makes an arrest for a violation of paragraph~~
21 ~~(1), the peace officer is not required to inform the victim of his or~~
22 ~~her right to make a citizen's arrest pursuant to subdivision (b) of~~
23 ~~Section 836.~~

24 (f) ~~As used in this section:~~

25 (1) ~~"Peace officer" means any person defined in Chapter 4.5~~
26 ~~(commencing with Section 830) of Title 3 of Part 2.~~

27 (2) ~~"Emergency medical technician" means a person who is~~
28 ~~either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses~~
29 ~~a valid certificate or license in accordance with the standards of~~
30 ~~Division 2.5 (commencing with Section 1797) of the Health and~~
31 ~~Safety Code.~~

32 (3) ~~"Nurse" means a person who meets the standards of Division~~
33 ~~2.5 (commencing with Section 1797) of the Health and Safety~~
34 ~~Code.~~

35 (4) ~~"Serious bodily injury" means a serious impairment of~~
36 ~~physical condition, including, but not limited to, the following:~~
37 ~~loss of consciousness; concussion; bone fracture; protracted loss~~
38 ~~or impairment of function of any bodily member or organ; a wound~~
39 ~~requiring extensive suturing; and serious disfigurement.~~

1 ~~(5) “Injury” means any physical injury which requires~~
2 ~~professional medical treatment.~~

3 ~~(6) “Custodial officer” means any person who has the~~
4 ~~responsibilities and duties described in Section 831 and who is~~
5 ~~employed by a law enforcement agency of any city or county or~~
6 ~~who performs those duties as a volunteer.~~

7 ~~(7) “Lifeguard” means a person defined in paragraph (5) of~~
8 ~~subdivision (d) of Section 241.~~

9 ~~(8) “Traffic officer” means any person employed by a city,~~
10 ~~county, or city and county to monitor and enforce state laws and~~
11 ~~local ordinances relating to parking and the operation of vehicles.~~

12 ~~(9) “Animal control officer” means any person employed by a~~
13 ~~city, county, or city and county for purposes of enforcing animal~~
14 ~~control laws or regulations.~~

15 ~~(10) “Dating relationship” means frequent, intimate associations~~
16 ~~primarily characterized by the expectation of affectional or sexual~~
17 ~~involvement independent of financial considerations.~~

18 ~~(11) (A) “Code enforcement officer” means any person who~~
19 ~~is not described in Chapter 4.5 (commencing with Section 830) of~~
20 ~~Title 3 of Part 2 and who is employed by any governmental~~
21 ~~subdivision, public or quasi-public corporation, public agency,~~
22 ~~public service corporation, any town, city, county, or municipal~~
23 ~~corporation, whether incorporated or chartered, who has~~
24 ~~enforcement authority for health, safety, and welfare requirements,~~
25 ~~and whose duties include enforcement of any statute, rules,~~
26 ~~regulations, or standards, and who is authorized to issue citations,~~
27 ~~or file formal complaints.~~

28 ~~(B) “Code enforcement officer” also includes any person who~~
29 ~~is employed by the Department of Housing and Community~~
30 ~~Development who has enforcement authority for health, safety,~~
31 ~~and welfare requirements pursuant to the Employee Housing Act~~
32 ~~(Part 1 (commencing with Section 17000) of Division 13 of the~~
33 ~~Health and Safety Code); the State Housing Law (Part 1.5~~
34 ~~(commencing with Section 17910) of Division 13 of the Health~~
35 ~~and Safety Code); the Manufactured Housing Act of 1980 (Part 2~~
36 ~~(commencing with Section 18000) of Division 13 of the Health~~
37 ~~and Safety Code); the Mobilehome Parks Act (Part 2.1~~
38 ~~(commencing with Section 18200) of Division 13 of the Health~~
39 ~~and Safety Code); and the Special Occupancy Parks Act (Part 2.3~~

(commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) “Custody assistant” means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) “Search and rescue member” means any person who is part of an organized search and rescue team managed by a government agency.

(14) “Security officer” means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(15) “Transit employee” means any employee of an operator as defined in Section 99210 of the Public Utilities Code.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal.3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal.3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 3. Section 243.3 of the Penal Code is amended to read:

243.3. (a) When a battery is committed against the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or hire, against a schoolbus driver, or driver, against the person of a station agent or ticket agent for the entity providing the transportation, transportation, against the person of an individual authorized to issue citations for fare evasion or passenger conduct violations for a public transportation provider, or against the person of a parking control officer, and the person who commits the offense knows or reasonably should know that the victim, in the case of an operator, driver, or agent, individual authorized to issue citations for fare evasion or passenger conduct violations, or parking control officer, is engaged in the performance of his or her duties, or is a

1 passenger the offense shall be punished by a fine not exceeding
2 ~~ten~~ twenty thousand dollars—~~(\$10,000)~~, (\$20,000), or by
3 imprisonment in a county jail not exceeding one year, the state
4 prison not exceeding four years, or by both that fine and
5 imprisonment. If an injury is inflicted on that victim, the offense
6 shall be punished by a fine not exceeding ~~ten~~ twenty thousand
7 dollars—~~(\$10,000)~~, or by imprisonment in a county jail not
8 exceeding one year (\$20,000), or by imprisonment in the state
9 prison for ~~16 months~~, or two three, four, or three six years, or by
10 both that fine and imprisonment.

11 (b) As used in this section, “public transportation provider”
12 means a publicly or privately owned entity that operates, for the
13 transportation of persons for hire, a bus, taxicab, streetcar, cable
14 car, trackless trolley, or other motor vehicle, including a vehicle
15 operated on stationary rails or on a track or rail suspended in air,
16 or that operates a schoolbus.

17 SEC. 4. Section 1203.055 of the Penal Code is amended to
18 read:

19 1203.055. (a) Notwithstanding any other law, in sentencing a
20 person convicted of committing or of attempting to commit one
21 or more of the offenses listed in subdivision (b) against a person
22 who is a passenger, operator, driver, or other occupant of any
23 public transit vehicle whether the offense or attempt is committed
24 within the vehicle or directed at the vehicle, the court shall require
25 that the person serve some period of confinement. If probation is
26 granted, it shall be a condition of probation that the person shall
27 be confined in the county jail for some period of time. If the time
28 spent in jail prior to arraignment is less than 24 hours, it shall not
29 be considered to satisfy the requirement that some period of
30 confinement be imposed.

31 As used in this subdivision, “public transit vehicle” means any
32 motor vehicle, streetcar, trackless trolley, bus, shuttle, light rail
33 system, rapid transit system, subway, train, taxi cab, or jitney,
34 which transports members of the public for hire.

35 (b) Subdivision (a) applies to the following crimes:

36 (1) Murder.

37 (2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2,
38 or 246.

39 (3) Robbery, in violation of Section 211.

40 (4) Kidnapping, in violation of Section 207.

- 1 (5) Kidnapping, in violation of Section 209.
- 2 (6) Battery, in violation of Section 243, 243.1, or 243.3.
- 3 (7) Rape, in violation of Section 261, 262, 264, or 264.1.
- 4 (8) Assault with intent to commit rape or sodomy, in violation
- 5 of Section 220.
- 6 (9) Any other offense in which the defendant inflicts great bodily
- 7 injury on any person other than an accomplice. As used in this
- 8 paragraph, “great bodily injury” means “great bodily injury” as
- 9 defined in Section 12022.7.
- 10 (10) Grand theft, in violation of subdivision (1) of Section 487.
- 11 (11) Throwing of a hard substance or shooting a missile at a
- 12 transit vehicle, in violation of Section 219.2.
- 13 (12) Unlawfully causing a fire, in violation of Section 452.
- 14 (13) Drawing, exhibiting, or using a firearm or deadly weapon,
- 15 in violation of Section 417.
- 16 (14) A violation of Section 214.
- 17 (15) A violation of Section 215.
- 18 (16) Kidnapping, in violation of Section 209.5.
- 19 (c) Probation shall not be granted to, nor shall the execution or
- 20 imposition of sentence be suspended for, any person convicted of
- 21 a felony offense falling within this section if the person has been
- 22 previously convicted and sentenced pursuant to this ~~section.~~
- 23 ~~section, or for any person convicted of a violation of Section 241.3,~~
- 24 ~~243.3, or 245.2.~~
- 25 (d) (1) The existence of any fact which would make a person
- 26 ineligible for probation under subdivisions (a) and (c) shall be
- 27 alleged in the accusatory pleading, and either admitted by the
- 28 defendant in open court, or found to be true by the jury trying the
- 29 issue of guilt or by the court where guilt is established by a plea
- 30 of guilty or nolo contendere or by a trial by the court sitting without
- 31 a jury.
- 32 A finding bringing the defendant within this section shall not be
- 33 stricken pursuant to Section 1385 or any provision of law.
- 34 (2) This subdivision does not prohibit the adjournment of
- 35 criminal proceedings pursuant to Division 3 (commencing with
- 36 Section 3000) or Division 6 (commencing with Section 6000) of
- 37 the Welfare and Institutions Code.
- 38 (e) The court shall require, as a condition of probation for any
- 39 person convicted of committing a crime which took place on a
- 40 public transit vehicle, except in any case in which the court makes

1 a finding and states on the record clear and compelling reasons
2 why the condition would be inappropriate, that the person make
3 restitution to the victim. If restitution is found to be inappropriate,
4 the court shall require as a condition of probation, except in any
5 case in which the court makes a finding and states on the record
6 its reasons that the condition would be inappropriate, that the
7 defendant perform specified community service. Nothing in this
8 subdivision shall be construed to limit the authority of a court to
9 provide additional conditions of probation.

10 (f) In any case in which a person is convicted of committing a
11 crime which took place on a public transit vehicle, the probation
12 officer shall immediately investigate and report to the court at a
13 specified time whether, as a result of the crime, property damage
14 or loss or personal injury was caused by the defendant, the amount
15 of the damage, loss, or injury, and the feasibility of requiring
16 restitution to be made by the defendant. When a probation report
17 is required pursuant to Section 1203 the information required by
18 this subdivision shall be added to that probation report.

19 ~~SEC. 3.~~

20 *SEC. 5.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.